

DOCKET FILE COPY ORIGINAL

ORIGINAL

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of )  
 )  
Policies and Rules Implementing )  
the Telephone Disclosure and Dispute )  
Resolution Act )

CC Docket No. 93-22

RECEIVED

OCT 31 1994

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

REPLY COMMENTS

MCI Telecommunications Corporation (MCI) hereby provides its  
reply comments in response to the Commission's Order on  
Reconsideration and Further Notice of Proposed Rulemaking, FCC  
94-200, CC Docket No. 93-22, adopted August 2, 1994 and released  
August 31, 1994 (Notice). Therein, the Commission proposes to  
amend its rules, specifically, 47 CFR Sections 64.1501, 64.1504,  
and 64.1510, to plug "loopholes" that have permitted information  
service providers to charge consumers for making calls on 800  
lines without valid presubscription agreements.

In its initial comments, MCI indicated its full support for  
the Commission's goal of remedying problems that have arisen from  
the activities of some 800 information service providers who have  
sought, and found, "loopholes" in the Commission's 800  
information services rule restrictions. These have resulted in a  
barrage of consumer and business complaints.

However, MCI indicated that it has serious reservations  
about proposed rules that would redefine "presubscription or  
comparable arrangement" to require an executed writing,<sup>1</sup> and  
would prohibit common carriers from billing subscribers for  
presubscribed information services without evidence of a written

<sup>1</sup> See Notice at 13.

No. of Copies rec'd  
List A B C D E

*004*

agreement.<sup>2</sup> If adopted, these rules would seriously impede the manner in which business in the electronic marketplace will be conducted and, therefore, would have a negative effect on legitimate commerce. In lieu of imposing such constraints on trade, MCI recommended that the Commission adopt the approach established in MCI's tariff, which effectively forecloses the use of automatic number information or ANI for use by information service providers for billing.

The views expressed in the comments clearly reflect a consensus that a problem exists in the provision of certain types of information services furnished via 800 numbers. A number of commenters support the Commission's proposed rule, which is intended to eliminate these problems, namely, to require that presubscription agreements be executed in writing. However, as demonstrated by MCI and other carriers, the Commission's proposed rule goes far beyond the identified problem; it "fixes" too much, would interfere with the reasonable provision of services to customers, and is not necessary to eliminate the problem identified.<sup>3</sup>

As an initial matter, and as emphasized by MCI in its initial comments herein, the Commission's current rules and

---

<sup>2</sup> Id.

<sup>3</sup> MCI will respond herein only where it believes it essential to do so in order to create an adequate record for decisioned purposes. MCI's failure to address any particular comments or position should not be interpreted to mean that MCI supports the position expressed in those comments.

Order<sup>4</sup> restricting the use of 800 numbers to provide "information," and its proposed rule requiring presubscription agreements to be in writing, have introduced substantial confusion in the marketplace, in part, because the Commission has never defined the term "information."<sup>5</sup> It appears that the Commission interprets "information" to mean "information service" because the Commission states that "information services charged on a per-call basis may be made available over 800 numbers when they are charged to a credit or charge card or provided under a presubscription arrangement." (emphasis added).<sup>6</sup> Moreover, in said Order, the Commission appears to view information services as services that otherwise would fall within the definition of "pay-per-call services," but are offered via 800 access. Thus, the Commission stated that "TDDRA clearly and unambiguously prohibits the use of 800 numbers for certain pay-per-call purposes...";<sup>7</sup> and that "[a]lthough use of 800 numbers to provide pay-per-call services is severely constrained by the TDDRA, an exemption is created for information services offered under a preexisting agreement or through credit or charge card

---

<sup>4</sup> Policies and Rules Implementing the Telephone Disclosure and Dispute Resolution Act, 8 FCC Rcd 6885 (1993) (Order).

<sup>5</sup> See, also, Comments of AT&T Corp. (AT&T) and Southwestern Bell, asking the Commission to define the term "information."

<sup>6</sup> Order at 6891.

<sup>7</sup> Id. at 6890.

transactions."<sup>8</sup>

This definitional issue is critical because the definition of "pay-per-call" services is sufficiently broad to encompass "enhanced services," which currently are offered via 800 access pursuant to "presubscription agreements". By changing the definition of "presubscription agreement" to require a written contract in all instances, the Commission would adversely impact the provision of current enhanced services by carriers, as well as future products under development. The Commission's proposed rule also would unjustifiably interfere with the provision of information services by carriers to their calling card customers,<sup>9</sup> even though there is no evidence whatsoever of any problems or abuses in connection with these service arrangements, which have been ongoing for several years now.

Finally, as noted by AT&T, the Commission's proposed rule would apply to all information services offered pursuant to presubscription agreements, not only those services offered via 800 access. There is no available evidence in this record -- or elsewhere, for that matter -- to support a finding that information services not offered via 800 access are a problem or, otherwise, raise public interest concerns that need to be addressed by sweeping all-inclusive rules. Therefore, there is

---

<sup>8</sup> Id. at 6891. BellSouth appears to interpret the Commission's rule similarly. In its comments, BellSouth states that "... 'information services' encompasses audio information and entertainment programming and 'live' services which would be pay-per-call services but for their inclusion within one of the specific enumerated exceptions under the Act and the Commission's Rules...". BellSouth Comments at 1, n.2.

<sup>9</sup> See, Comments of Sprint at 2-4.

no reason to apply a more stringent definition of "presubscription agreement" to services provided via 900 or other access numbers.

It is plainly evident that the Commission's proposed rule would unduly interfere with the provision of current services. Moreover, the proposed rule is far broader than it need be. The facts thus far developed on the record show that the "abusive" 800 information programs are primarily those in which a presubscription agreement is established solely by capturing the ANI of the telephone from which the call originates. A requirement that all presubscription agreements be in writing is not necessary to address this problem. Rather, the Commission should adopt a rule that addresses the specific issues raised and foreclose the use of ANI, furnished as a byproduct of the provision of 800 service, to bill, directly or indirectly, for what may be defined as information services not provided as an incident of the furnishing of tariffed common carrier services. MCI's tariff currently prohibits the use of ANI in such fashion and MCI has terminated customers who use ANI as the sole basis of establishing a "presubscription agreement." Although MCI's tariff has been somewhat effective, customers currently can "port" their 800 numbers to other carriers and continue the abusive practice. A Commission rule prohibiting the use of ANI in this manner, however, would eliminate this possibility.

Sprint and AT&T urge the Commission to find that the use of a carrier calling card is a "presubscription or comparable arrangement." Although this approach would allow carriers to

continue providing information services to their calling card customers, it would not address the issue of "enhanced" services accessed via 800 and not billed to the carrier's calling card or a commercial credit card. Accordingly, this option is not adequate.<sup>10</sup>

Finally, MCI opposes any suggestion that a consumer can never be charged for services obtained via 800 access: an idea that is expressed in the simplistic refrain that "calls to an 800 number must always be free." This approach simply is not supportable under current law because consumers clearly can be, and are, charged for common carrier communications services (such as Telecommunications Relay Service and operator services) which are accessed by dialing an 800 number. The Commission should clear-up any misconceptions to the contrary; as it would be doing the public and the industry a great disservice by allowing any such confusion to continue.

---

<sup>10</sup> Of course, if the Commission finds that certain enhanced services are not "pay-per-call" services or "information services" subject to the Commission's rules, this may not be an issue.

Based on the foregoing, MCI urges the Commission to adopt the suggestions contained herein and in MCI's comments.

Respectfully submitted,

MCI TELECOMMUNICATIONS CORPORATION

By:



Gregory F. Intoccia

Mary J. Sisak

Donald J. Elardo

1801 Pennsylvania Avenue, N.W.

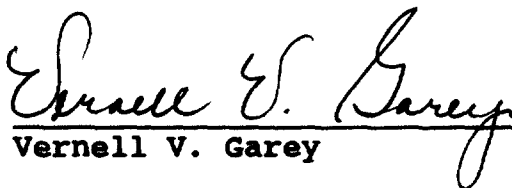
Washington, D.C. 20005

Its Attorneys

October 31, 1994

**CERTIFICATE OF SERVICE**

I, Vernell V. Garey do hereby certify that copies of the foregoing "REPLY COMMENTS" in File No. CC Docket No. 93-22 were mailed first-class, postage prepaid, to the following on October 31, 1994.

  
Vernell V. Garey

**\*HAND-DELIVERED**

Robert Spangler\*  
Federal Communications Commission  
Common Carrier Bureau  
2025 M Street, N.W., Room 6206  
Washington, D.C. 20554

International Transcription Service\*  
1919 M Street, N.W., Suite 214  
Washington, D.C. 20554

Michael J. Shortley, III  
Rochester Tel Center  
180 South Clinton Avenue  
Rochester, NY 14646-0995

David Cosson  
L. Marie Guillory  
National Telephone Cooperative  
Association  
2626 Pennsylvania Avenue, N.W.  
Washington, D.C. 20037

Lisa M. Zaina  
General Counsel  
OPASTCO  
21 Dupont Circle N.W.  
Suite 700  
Washington, D.C. 20036

Mary McDermott  
Vice President and General  
Counsel  
Linda Kent  
United States Telephone  
Association  
1401 H Street, N.W., Suite 600  
Washington, D.C. 20005

Walter Steimel, Jr.  
Fish & Richardson  
601 13th Street, N.W.  
Fifth Floor North  
Washington, D.C. 20005  
Attorneys for Pilgrim  
Telephone, Inc.

Eugene J. Baldrate  
Director-Federal Regulatory  
The Southern New England  
Telephone Company  
227 Church Street  
New Haven, CT 06510

Joel R. Dichter, Esq.  
Klein, Zelman, Briton,  
Rothermel & Dichter  
485 Madison Avenue  
New York, NY 10022  
Attorney for Association of Information  
Providers



**Randall B. Lowe**  
**Joseph V. Gote**  
**Piper and Marbury**  
**1200 Nineteenth Street, N.W.**  
**Washington, D.C. 20036-2430**

**Aaron Weinstein, Esq.**  
**General Counsel**  
**International Telemedia Associates, Inc.**  
**1000 Circle 75 Parkway**  
**Suite 700**  
**Atlanta, GA 30339**

**Mark Cohn**  
**General Counsel**  
**900 Capital Services**  
**651 Gateway Boulevard**  
**Suite 460**  
**South San Francisco, CA 94080**

**R. Michael Senkowski**  
**Jeffrey S. Linder**  
**Stephen J. Rosen**  
**Wiley, Rein & Fielding**  
**1776 K Street, N.W.**  
**Washington, D.C. 20006**  
**Attorneys for Tele-Communications**  
**Association**

**Ken McEldowney**  
**Executive Director**  
**Consumer Action**  
**116 New Montgomery Street**  
**Suite 233**  
**San Francisco, CA 94105**

**Lawrence A. Breeden, President**  
**National Association of Consumer Agency**  
**Administrators**  
**1010 Vermont Avenue N.W., Suite 514**  
**Washington, D.C. 20005**

**Brian R. Moir**  
**Moir & Hardman**  
**2000 L Street, N.W., Suite 512**  
**Washington, D.C. 20036-4907**  
**Attorney for International Communications**  
**Association**

**Wayne V. Black**  
**C. Douglas Jarrett**  
**Michael R. Bennet**  
**Keller and Heckman**  
**1001 G Street, N.W., Suite 500 West**  
**Washington, D.C. 20001**  
**Attorneys for American Petroleum Institute**

**Robert L. Smith, Jr.**  
**Executive Director**  
**Interactive Services Association**  
**8403 Colesville Road, Suite 865**  
**Silver Spring, MD 20910-3368**

**William W. Burrington, Esq.**  
**Burrington & Associates**  
**1250 Connecticut Avenue, N.W., Suite 600**  
**Washington, D.C. 20036-2603**  
**Attorney for Interactive Services Association**

**Debra L. Lagapa**  
**Levine, Lagapa & Block**  
**1200 19th Street, N.W., Suite 602**  
**Washington, D.C. 20036**  
**Counsel for the New York Clearing**  
**House Association**

**Albert H. Kramer**  
**Robert F. Aldrich**  
**Keck, Mahin & Cate**  
**1201 New York Avenue, N.W., Penthouse**  
**Washington, D.C. 20005-1319**

**Albert Shuldiner**  
**Assistant General Counsel**  
**Information Industry Association**  
**555 New Jersey Avenue, N.W., Suite 800**  
**Washington, D.C. 20001**

**Hubert H. Humphrey III**  
**Attorney General**  
**State of Minnesota**  
**Gary R. Cunningham**  
**Assistant Attorney General**  
**1200 NCL Tower**  
**445 Minnesota Street**  
**St. Paul, MN 55101-2130**

**William J. Cowan**  
**General Counsel**  
**New York State Department of**  
**Public Service**  
**3 Empire State Plaza**  
**Albany, NY 12223-1350**

**Rowland L. Curry, P.E.**  
**Director, Telephone Utility Analysis**  
**Public Utility Commission of Texas**  
**7800 Shoal Creek Boulevard**  
**Austin, TX 78757**

**Maureen A. Scott**  
**Assistant Counsel**  
**Commonwealth of Pennsylvania**  
**Pennsylvania Public Utility Commission**  
**P.O. Box 3265**  
**Harrisburg, PA 17105-3265**

**Peter Arth, Jr.**  
**Edward W. O'Neill**  
**Ellen S. Levine**  
**Attorneys for the People of the State**  
**of California and the Public Utilities**  
**Commission of the State of California**  
**505 Van Ness Avenue**  
**San Francisco, CA 94102**

**Paul Rodgers, General Counsel**  
**Charles D. Gray, Assistant General Counsel**  
**James Bradford Ramsay, Deputy Assistant**  
**National Association of Regulatory**  
**Utility Commissioners**  
**1102 ICC Building, Post Office Box 684**  
**Washington, D.C. 20044**

**Ferrell B. Mallory, Director**  
**Telecommunications Services**  
**Brigham Young University**  
**1206 SFLC, PO Box 16798**  
**Provo, UT 84602-6798**

**Mark C. Rosenblum**  
**Robert J. McKee**  
**Judy Sello**  
**AT&T Corp.**  
**Room 2255F2**  
**295 North Maple Avenue**  
**Basking Ridge, NJ 07920**

**Christopher L. Rasmussen**  
**Nancy K. McMahon**  
**Pacific Bell and Nevada Bell**  
**2600 Camino Ramon, Rm. 2W901**  
**San Ramon, CA 94583**

**James L. Wurtz**  
**1275 Pennsylvania Avenue, N.W.**  
**Washington, D.C. 20004**  
**Attorney for Pacific Bell and**  
**Nevada Bell**

**J. Scott Nicholls**  
**Manager of Regulatory Affairs**  
**Allnet Communication Services, Inc.**  
**1990 M Street, N.W., Suite 500**  
**Washington, D.C. 20036**

Leon M. Kestenbaum  
Jay C. Keithley  
Marybeth M. Banks  
Sprint Corporation  
1850 M Street, N.W., Suite 1110  
Washington, D.C. 20036

Craig T. Smith  
P.O. Box 11315  
Kansas City, MO 64112

Michael S. Pabian  
Attorney for Ameritech  
Room 4H76  
2000 West Ameritech Center Drive  
Hoffman Estates, IL 60196-1025

John M. Goodman  
Attorney for the Bell Atlantic  
Telephone Companies  
1710 H Street, N.W.  
Washington, D.C. 20006

Richard McKenna, HQEO3J36  
GTE Service Corporation  
P.O. Box 152092  
Irving, TX 75015-2092

Gail L. Polivy  
GTE Service Corporation  
1850 M Street, N.W.  
Suite 1200  
Washington, D.C. 20036

M. Robert Sutherland  
Richard M. Sbaratta  
Helen A. Shockey  
BellSouth Telecommunications, Inc.  
4300 Southern Bell Center  
675 West Peachtree Street, N.E.  
Atlanta, GA 30375

Robert M. Lynch  
Richard C. Hartgrove  
J. Paul Walters, Jr.  
Attorneys for Southwestern Bell  
Telephone Company  
One Ball Center, Room 3520  
St. Louis, MO 63101